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JUDICIAL INTERPRETATION OF THE MINIMUM WAGE IN AUSTRALIA

Present-day interest in the subject of the legal minimum wage in this country and the probability, amounting almost to a certainty, that one or more of our states will within the next two or three years, enact and endeavor to enforce a compulsory minimum wage law, make it worth while to inquire as to the principles on which minimum wages have been established by law in other countries.

Aside from the legally established pay of public servants, and in some cases of the wages prescribed by law to be paid by contractors engaged on public works, the only examples which we have of wages regulated by law are to be found in New Zealand; in all the Australian states as well as the Commonwealth; in England since January, 1910, in a few manufacturing industries; and since 1912 in the coal mines of England and Wales. English experience with the minimum wage has been too brief and too limited in its industrial range to afford much information for constructive purposes or to enable us to judge as to the general acceptability of the principle. Throughout Australasia, on the other hand, the principle of the minimum wage has now found general acceptance. Employers and employees there differ more or less in their views as to what is the best machinery for bringing the legal minimum wage into existence and securing its enforcement. Differences in opinion exist also as to the range of industries to which it should be applied. These differences in views have some of them found expression in party platforms, but few persons could be found today, in either Australia or New Zealand, who would challenge the statement that the principle of a legal minimum wage has been accepted as a permanent policy in the industrial legislation of that portion of the world.

There are among Americans some persons—not lacking in intelligence—who imagine that the system of a legal minimum wage

is one in which a certain definite remuneration is prescribed by statute for all wage-earners, or at least for certain classes of workers. But this is not the minimum wage as it is known in England, New Zealand, or Australia. It is true that there is in New Zealand and in most of the Australian states a legal minimum wage, in the strictest sense of that term: that is, an amount fixed by statute below which no employer in manufacturing industries is allowed to pay any of his operatives. This amount is in Victoria 2s. 6d. (60 cents) per week, in New South Wales and South Australia 4s. (97 cents) per week, and in New Zealand 5s. ($1.21) per week. The New Zealand statute also provides that there shall be an annual increase of at least 3s. per week until £1 ($4.87) per week is reached. These insignificant sums are not what is referred to, however, when the mimimum wage is commonly spoken of. They are fixed by statute in order to prevent the practice, which some employers in the clothing trades had established, of taking children into their employ under the pretence of teaching them a trade. No wages at all would be paid to these and frequently they were kept at some trivial tasks, like removing bastings or sewing plain seams. When after some weeks or months the parents of these children would ask that they be paid for their services, the employer would dismiss them and engage new "learners."

The minimum wage which here concerns us, however, and which has drawn the attention of the outside world to Australasian experience is not a wage prescribed by statute, although it is upheld by statutory authority. There are two ways in which the minimum wage has been secured in the Australasian colonies. In the state of Victoria since 1896 minimum wages have been established in various occupations and industries through a compulsory conference of employers and employees, generally known as a "wages board" (one for each trade), presided over by an impartial chairman who, if necessary, gives the deciding vote. This board also has power to fix the maximum number of hours per day or week, the number or proportion of apprentices to journeymen and the rates of pay for overtime.

When a board has completed its determination of these matters and has made its report, and this report has been published in the government *Gazette*, the wages fixed and other conditions established by the board become legally binding on all employers in the trade within the area prescribed by the statute or

parliamentary resolution which provided for the establishment of the board. The Victorian method has been followed, with certain modifications, in South Australia since 1900, in Queensland since 1908, and in Tasmania since 1910.

The other way in which the minimum wage has been established in Australia is through the awards of the compulsory arbitration courts. New Zealand led the way in 1894; New South Wales followed in 1901; Western Australia in 1902; and in 1904 the Parliament of the Australian Commonwealth passed a compulsory arbitration act intended to prevent or settle "industrial disputes extending beyond the limits of any one state." Compulsory arbitration was not much thought of as a means of fixing wages or regulating labor conditions, but was intended primarily as a means of preventing strikes and lockouts. Since, however, it is necessary for an arbitration court, if it would settle an industrial dispute, to lay down the terms on which employment shall continue, it becomes one of the functions of the court to fix minimum wages. Sometimes these wages are applicable only to the parties who have been cited before the court, sometimes the award may be extended by the court to other specified employers, and sometimes the award of the court by the principle known as "the common rule" becomes applicable to all employers in the trade situated within the jurisdiction of the court.

New South Wales, in revising her compulsory arbitration law in 1908, incorporated in the new statute a scheme for wages boards as well as an arbitration court. New Zealand in that same year adopted a system of conciliation councils to pass upon disputes before they came before the arbitration court. These conciliation councils resemble in their composition, methods of procedure, and in several other respects the wages boards in the Australian colonies, and they now actually settle the great majority of the industrial disputes which arise in the Dominion without the necessity of taking them before the court for a hearing. On the other hand, in Victoria since 1903 and in South Australia since 1907, there have been in existence courts of industrial appeals which can be called upon to review the determinations of wages boards. In Queensland and Tasmania no special courts exist for this purpose, but the validity of a wages board determination may be questioned in the supreme court. When to all this is added the fact that in South Australia and

Tasmania a strike against the determination of a wages board is punishable by heavy fine, it will be seen that these two systems, wages boards and compulsory arbitration, originating independently of each other and inspired in large part by different motives, are gradually tending to approach each other in method and purpose.

I

It is not the purpose of this article to describe the modes of operation, or the work accomplished by either the wages boards or the compulsory arbitration courts in Australia. It is rather to get at the theory underlying the minimum wage as it is finding expression today in the determination of wages boards and in arbitration court awards in Australia and New Zealand. It is hoped that an understanding of the principles which have in the course of a decade or more been evolved as a result of Australasian experience in this matter, may be of use to those who are considering minimum wage legislation in this country, and who are more or less uncertain as to what would be the results of such laws. Of course we are not obliged to follow Australasian precedents, but in this matter we have no other precedents to follow, and it seems both natural and proper that we should profit by the experience of a people who are of the same race, have inherited the same juridical and ethical ideas, have the same spirit of progress, and who, admiring our political institutions, have copied into their own fundamental laws the principles which have found expression in our constitutions.

Now as to the work of the wages boards and conciliation councils, it may be frankly stated that a search for the underlying principle of a minimum wage is bound to prove more or less disappointing. These gatherings of employers and employed, conducting their negotiations in a thoroughly informal manner, are not bound to follow any principle. It is a process of "higgling" which takes place, the same as exists in any trade where collective bargaining is found and where representatives of employers and employed are endeavoring to fix up the wage scale which shall form the basis of the new industrial agreement. In the wages board meetings those arguments are used which seem likely to have most weight with the other side, or if not with the other side, at least with the chairman, who is wondering how he can best compromise the extreme demands which both sides are putting before him. Accordingly it may happen that

arguments which are of controlling importance in one board may not be advanced at all in another. If I were to judge from what took place in the numerous board meetings which it was my privilege to attend, as well as from the statements of the chairmen of boards with whom I talked, I should say that the argument most frequently advanced by the labor delegates, and the hardest to meet, was that the high cost of living made the increase in wages necessary. The employers usually attempted to check the force of this argument by claiming that for various reasons cited the industry or trade which they represented was not able to stand the increase demanded, or perhaps any increase whatever. In cases where the laborers felt obliged to admit some truth in the employer's position, their invariable answer took the form of the question: "Can you not pay the wages demanded and pass them on to the consumer in the shape of higher prices?" It need hardly be said that the answer to this question depended largely upon the nature of the commodity being produced and the extent of outside competition which the employers in that state or district had to meet.

A judge of an arbitration court, on the other hand, ought to have some general principle in mind in fixing a minimum wage, and he should follow this principle, if not with unvarying consistency, yet with few departures. Although he must settle each case on its own merits and must give due weight to the arguments on both sides, yet a knowledge of the fact that his decision in one case will inevitably be cited in succeeding cases by one or other of the contending parties, makes it incumbent upon him to proceed with caution and to act on the basis of broad principles of equity if his judgments are to be consistent and to command respect.

The statutes which have established arbitration courts or wages boards have seldom given any clear indication, oftentimes not even a hint, as to what the legislature had in mind as the underlying principle of the minimum wage. In Victoria, it is true, an amendment to the Factories act in 1903 required boards to base their determinations on the average "prices or rates of payment" paid by "reputable employers to employees of average capacity," but inasmuch as the term "reputable employers" was not defined, this amendment only created confusion and led to bitter strife in the board meetings. It was finally repealed in Victoria, though it still exists in the acts of some of the other states.

The failure of the legislature to lay down the principle on which the minimum wage should be based, has been a cause of much annoyance to some of the judges of the arbitration court. Mr. Justice Higgins, of the Commonwealth Arbitration Court, said in the course of his decision in the first case which came before him that the legislature had declared that wages must be "fair and reasonable" but had not indicated what was to be the criterion by which the court was to determine what was fair and reasonable. He continued:

> It is to be regretted that the Legislature has not given a definition of the words. It is the function of the Legislature, not of the Judiciary, to deal with social and economic problems; it is for the Judiciary to apply, and when necessary, to interpret the enactments of the Legislature. . . . The strength of the Judiciary in the public confidence is largely owing to the fact that the judge has not to devise great principles of action as between great classes, or to lay down what is fair and reasonable as between contending interests in the community; but has to carry out mandates of the Legislature, evolved out of the conflict of public opinion after debate in Parliament. I venture to think that it will not be found wise thus to bring the judicial department within the range of political fire. These remarks would not be made if the Legislature had defined the general principles on which I am to determine whether wages are fair and reasonable or the reverse.[1]

The judges who presided over the arbitration courts during the early years of their existence, naturally showed some timidity in announcing the principles which would govern them in fixing wages and oftentimes refrained from making any clear-cut statements on the subject. Mr. Justice Williams, the first president of the New Zealand Arbitration Court, said—but not in the course of a decision: "The duty of the Court is to pronounce such an award as will enable the particular trade to be carried on";[2] and Mr. Justice Cohen, the first president of the New South Wales Arbitration Court, seems to have had the same idea in mind, for in one of the early decisions rendered by him he said: "In fixing the minimum wage at 50s. we necessarily had regard to the existing conditions of the trade and its prospects, of which there was evidence before the Court. . . . We think at the present time it would be exceedingly unwise to do anything that

[1] *Ex parte H. V. McCay,* 2 Commonwealth Arbitration Reports, 1.

[2] Letter to "The (London) Times," quoted in Broadhead, *State Regulation of Labor in New Zealand,* p. 57.

would be likely to hamper the successful or the existing operations of the trade."[3]

One of the judges in the New Zealand court discussed the question of wages in such a way as to lead the workers to think that wages were to be fixed on a profit-sharing basis, but later judges in both New Zealand and Australia have ridiculed the idea that wages could be established by a court of arbitration on a profit-sharing basis, since that would mean that a differential rate between employers would have to be fixed.

Slowly but unmistakably, judicial opinion in all the arbitration courts has tended in the direction of fixing the minimum wage on the basis of the needs of the worker. In New Zealand, as early as 1902, Mr. Justice Cooper, in a case involving the Auckland carpenters, said:

> In fixing the minimum we have had regard to the cost of living in Auckland, the nature of the work to be performed for the wages fixed, and the rates already fixed in other centres. We believe that the rates we have settled for Auckland are, compared with the cost of living in the cities of Wellington and Dunedin, where awards have already been made, fair and reasonable and justified by the evidence adduced before us in this case.[4]

Later judgments of the New Zealand court have made even more clear the fact that a living wage is the fundamental, though not the only, consideration in the minds of the judges who have been called upon to fix the minimum wage in a given trade. In New South Wales, Judge Heydon, who succeeded Mr. Justice Cohen as president of the Arbitration Court, said that while the arbitration act offered little guidance to the court in determining the principles to be followed, it was apparent that the court should recognize:

> First, the duty of assisting to, if possible, so arrange the business of the country that every worker, however humble, shall receive enough to enable him to lead a human life, to marry and bring up a family and maintain them and himself with, at any rate, some small degree of comfort. This, which may be shortly defined as the duty to prevent sweating is, I think, universally recognized in this country, and almost universally acted upon.[5]

[3] *Journeymen Confectioners Union* v. *Manufacturing Confectioners Association*, 2 (New South Wales) Industrial Arbitration Reports, 8.

[4] *Awards, Recommendations, etc., of the New Zealand Conciliation and Arbitration Court*, vol. III, p. 82.

[5] *New South Wales Saw-Mill and Timber-Yard Employees Association* v.

In West Australia, in spite of some differences of opinion among the judges as to what class of workers should have their needs considered in fixing a minimum wage, it seems to have been agreed that "a fair minimum wage" is at least one on which a man can live comfortably.[6]

The first president of the Commonwealth Arbitration Court, Mr. Justice O'Connor, was somewhat indefinite in his statement of the principles on which the court was to fix wages. In the first case [7] heard by him, after calling attention to the fact that the act itself laid down no principle on which wages were to be fixed but left the whole matter "absolutely to the discretion of the Court," he said:

> The only rule or principle—if it can be so called—which I can lay down, is that the Court is in each case to make such settlement of the matters in dispute as it shall deem fair and reasonable between the parties.

Now in the matter of wages the court said that it was not "fair and reasonable" that employees should share in the profits, for they "run no financial risks and incur no financial liabilities." Nor in the present case, said the court, was the "question of a living wage involved," since the wages to be fixed were those for ships' officers and the existing pay of the lowest officer was "much more than a living wage." The real question at issue, said the court, "resolves itself into this: Are the masters and officers getting fair pay for the work they are doing?"

The respondents claimed that the only way to test this was to consider the market value of the services rendered. "Market value," said the court, "is not the only test, for the whole body of modern legislation against sweating is founded on the experience that competition which fixes market value may under certain conditions produce a market rate of wage which literally is not enough to keep body and soul together." Since, however, in this case, the question of a living wage was not involved, the president thought that market value might well be taken as a basis, for he held that it "must always be the most important element in any

Sydney and Surburban Timber Merchants Association. [1905] Arb. Rep. 300.

[6] Schachner, *Die Soziale Frage in Australien und Neuseeland,* p. 184. See also Clark, "Labor Conditions in Australia," in *Bulletin of the (U. S.) Bureau of Labor,* No. 56 (January, 1905), p. 87.

[7] *Merchant Service Guild of Australia* v. *Commonwealth Steamship Owners Association,* 1 Comm. Arb. Rep. 1.

test which is to be applied." The market value of the services rendered by masters and officers engaged in the Australian coastal service was in his opinion to be found by a comparison with the market value of masters' and officers' services on ordinary deep sea voyages.

To that must be added something for the increasing responsibility and risk of constant coast and harbor navigation, and the management of ships in pilotage waters. There must also be added something for the increased cost of living in Australia, not only by reason of the higher costs of some of life's necessaries, but also by reason of the increased comfort of living and the higher standard of social conditions which the general sense of the community in Australia allows to those who live by labor.

It will be seen from the above statements that Mr. Justice O'Connor did not reject the idea of "the living wage" as a principle for determining the minimum wages to be paid, but that since he was dealing only with a class of laborers well above the minimum, he did not find the living wage a practicable measure for fixing the wages in dispute. At the same time his statements lack that clearness and definiteness which would enable us to understand exactly what principles the court intended to follow in settling the wage problem.

II

Such uncertainty as Mr. Justice O'Connor may have felt as to the principle to be followed in fixing the minimum rate of pay in the arbitration courts was not evinced by his successor, Mr. Justice Higgins, who became president of the Commonwealth Arbitration Court in 1907. It is true that he expressed his impatience with Parliament for not having made clear what principle the court was to follow in fixing wages, but since the selection of this principle was left to the court, he did not seek to evade the responsibility, but declared: "I shall do my best to ascertain by inference the meaning of the enactment; and Parliament can, of course, amend the act if it desire to declare another meaning." The act in question was not, however, in this case, the Commonwealth Conciliation and Arbitration act, but the Excise Tariff act (No. 16 of 1906).

This act, which has since been declared unconstitutional, since it interfered with the rights of the states, was intended to give legislative expression to the wide-spread feeling in Australia in favor

of protecting the interests of the laborer by means of tariff regulations, an idea which is usually designated as the "new protection" movement. By the terms of this act Parliament imposed an excise duty on agricultural machinery equal to one half the import duty on such articles, but provided that the act should not apply to goods manufactured in Australia under conditions as to the remuneration of labor which were declared by the president of the Arbitration Court to be "fair and reasonable." Any manufacturer desiring to be relieved from the payment of this excise, was to make application to the Arbitration Court and must satisfy the court that the wages paid to his employees were "fair and reasonable."

It was in the interpretation of these terms "fair and reasonable" as applied to wages that Mr. Justice Higgins first enunciated [8] his famous doctrine as to what should constitute the minimum wage. Owing to the fact that the standard set up in this case has steadily served as the precedent in other cases in the same court, and that the principle here laid down has generally been accepted by other courts in Australasia and even to some extent by wages boards, the statement of the president deserves to be quoted in full:

> The provision for fair and reasonable remuneration is obviously designed for the benefit of the employees in the industry; and it must be meant to secure for them something which they cannot get by the ordinary system of individual bargaining with employers. If Parliament meant that the conditions shall be such as they can get by individual bargaining—if it meant that those conditions are to be fair and reasonable which employees will accept and employers will give in contracts of service—there would have been no need for this provision. The remuneration could safely have been left to the usual, but unequal, contest, the "higgling of the market" for labour, with the pressure for bread on one side, and the pressure for profits on the other. The standard of "fair and reasonable," must, therefore, be something else; and I cannot think of any other standard more appropriate than the normal needs of the average employee, regarded as a human being living in a civilized community. I have invited counsel and all concerned to suggest any other standard; and they have been unable to do so. If, instead of individual bargaining, one can conceive of a collective agreement—an agreement between all the employers in a given trade on the one side, and all the employees on the other—it seems to me that the framers of the agreement would have to take, as the first and dominant factor, the cost of living as a civilized

[8] *Ex parte H. V. McCay*, 2 Comm. Arb. Rep. 1.

being. If A lets B have the use of his horses, on the terms that he give them fair and reasonable treatment, I have no doubt that it is B's duty to give them proper food (*sic*) and water, and such shelter and rest as they need; and, as wages are the means of obtaining commodities, surely the State, in stipulating for fair and reasonable remuneration for the employees, means that the wages shall be sufficient to provide these things, and clothing, and a condition of frugal comfort estimated by current human standards. This, then, is the primary test, the test which I shall apply in ascertaining the minimum wage that can be treated as "fair and reasonable" in the case of unskilled labourers.

Having accepted the principle of the living wage as the only standard of what was fair and reasonable for the unskilled laborers, the president next undertook to determine what was a living wage on the basis of the cost of living to the workers. He sought for and secured evidence from "workingmen's wives and others" as to "the cost of living—the amount which has to be paid for food, shelter, clothing, for an average laborer, with normal wants and under normal conditions." He found that this evidence was confirmed by statements furnished to him by land agents as to rents and by tradesmen as to commodities which workingmen purchased. He offered the attorney for the applicant an opportunity to call evidence to combat these statements but "he could produce no specific evidence in contradiction."

The evidence submitted to the court served to indicate that "the necessary average weekly expenditure for a laborer's home of about five persons" was about £1. 12s. 5d. ($7.88). These figures, however, covered only "rent, groceries, bread, meat, milk, fuel, vegetables, and fruit." They did not cover, said the court, "light (some of the lists omitted light), clothes, boots, furniture, utensils (being casual, not weekly expenditure), rates, life insurance, savings, accident or benefit societies, loss of employment, union pay, books and newspapers, train and tram fares, sewing machine, mangle, school requisites, amusements and holidays, intoxicating liquors, tobacco, sickness and death, domestic help, or any expenditure for unusual contingencies, religion, or charity." The applicant was paying his unskilled laborers 6s. a day or 36s. ($8.75) a week. After deducting £1. 12s. 5d., "necessary average weekly expenditures," there was left only 3s. 7d. (87 cents) to cover all these other items "and the area is rather large for 3s. 7d. to cover," said the judge, "even in the case of total abstainers and non-smokers, the case of most of the men in question."

After conducting an inquiry as to the wages paid for similar labor by public bodies and those fixed by the Woodworkers' Wages Board in Victoria, the court decided that 7s. ($1.70) a day constituted for unskilled laborers "fair and reasonable wages" and that under the circumstances he could not declare that the applicant's conditions of remuneration were fair and reasonable as to his laborers.

The judgment in this case is important not only because it was the first delivered by Mr. Justice Higgins after he became president of the Arbitration Court, but because the application was keenly fought and much evidence was submitted on both sides. The decision in this case, it was well understood, would become a precedent in other cases under the Excise Tariff act. By what must appear as the irony of fate, it so happened that the manufacturing establishment to which this judgment applied—one of the largest in Australia—was one which has always been regarded as a triumph of Australian manufacturing enterprise and whose owner had been active in furthering the passage of the Customs act of 1906 [9] to whose fortunes he had now, apparently, fallen a victim.

The principle which should govern the establishment of the minimum wage laid down in this Harvester case has been steadily and consistently followed by Mr. Justice Higgins whenever he has been called upon to fix the minimum wage under the Conciliation Arbitration act. Thus in the Marine Cooks' case[10] he said: "I cannot conceive any terms to be fair and reasonable which do not at the very least allow a man to live from his labor, to live as a human being in a civilized community." In this case he went beyond the kind of evidence as to the cost of living relied upon in the Harvester case, and quoted Robert Hunter's *Poverty* as authority for what constituted a physical efficiency wage in London, and Mrs. Louise More's *Wage Earners' Budgets* as showing what was a "fair living wage" in New York. After allowing for differences in the cost of living in these cities as compared with Australia, he decided that the conclusions of these writers tended to sustain his views at least 7s. a day was necessary to constitute a living wage in Australia.

[9] Ernest Aves, *Report to the Secretary of State for the Home Department on the Wages Boards and Industrial Conciliation and Arbitration Acts of Australia and New Zealand*, p. 121.

[10] 2 Comm. Arb. Rep. 55.

In the Broken Hill case,[11] heard in 1909, the Proprietary Company, a great silver and lead mining and smelting concern, had been brought into court because it had sought to reduce the wages of its men below the minimum fixed by a trade agreement entered into in 1906 and which expired at the close of 1908. Mr. Justice Higgins declared that "the first condition in the settlement of this industrial dispute as to wages is that at the very least a living wage should be secured to the employee," and he repeated his definition of a living wage which he had given in the Harvester case. As there was a considerable difference of opinion between the counsel for the company and those representing the union as to what constituted a living wage, the president proceeded to make a lengthy investigation into the cost of living at the two mining centres involved, Broken Hill and Port Pirie. For the purposes of this inquiry he used evidence from four sources: (1) the statements of dealers as to the prices of necessary commodities; (2) the average weekly purchases of certain workers' families in the coöperative stores at Broken Hill; (3) the practice of the State of New South Wales and the Commonwealth Government and of great institutions, such as the insurance companies, in making extra allowances to their officers and agents stationed at Broken Hill; and (4) the domestic budgets presented by workingmen and their wives.

It would be interesting, did space permit, to study the details brought out by this investigation of the cost of living in this unique industrial community thrown far out on the Australian desert. The purchase of drinking water from carts brought to the door at a price more than twelve times that charged for water in Melbourne; the high rents paid for the galvanized iron houses, "hot as ovens in summer, cold in the extreme in winter"; the absence of fresh fruit and vegetables and of any milk except that sold in tins; the high cost of food and of all other supplies brought from the outside; "the abnormally great infant mortality"; the high rate of sickness and of insurance and the consequent lapsing of policies—all conspired to create a cost of living far above the average in most cities of Australia.

After considering all the evidence, the president concluded that "the minimum wage proposed by the Company [7s. 6d. ($1.82)] is not a sufficient living wage in Broken Hill . . . and that no

[11] 3 Comm. Arb. Rep. 1.

less than the full sum of 8s. 7½d. ($2.09) . . . the minimum fixed for unskilled laborers by the agreement of December, 1906, and now claimed by the men . . . is required for the healthy subsistence of an average family." Conditions were found to be not quite as bad at Port Pirie and 8s. 3d. ($2.00) a day was fixed as the minimum wage there.

An interesting corollary to his method of fixing a living wage was furnished by Mr. Justice Higgins in the Marine Stewards case[12] in which judgment was pronounced in 1910. He declined to admit that the work of a steward was skilled—"skilled in the sense that a carpenter is skilled"—and adhered to his belief that 7s. a day was the proper minimum wage for a man of average capacity having no trade. But in fixing the wages of stewards he not only made deduction for their board and lodging which he estimated as being equivalent to £2. 5s. ($10.95) per month, but also made allowance for the "tips" or gratuities which they received from the passengers.

The employees urged strenuously that these gratuities should not be taken into account since they did not come from the employer, but the judge quoted a decision of the Court of Appeals in England, in a case under the Workmen's Compensation act,[13] to the effect that "tips" given to a waiter in a restaurant were to be counted among his "earnings in the employment of the same employer." "In the present case," continued the judge, "I have discovered that the employers do actually take into account the prospective tips in fixing the wages to be paid. It is curious to reflect that when a grateful passenger bestows on an attentive steward an extra gratuity for his special benefit, the benefit goes to the other stewards also, and that ultimately gratuities operate as a grant in aid of the company. For what is received in tips is deducted from wages."

The president felt that he could not fail to take account of the tips if he were to remain true to his doctrine of what constituted a living wage:

> The stewards come in contact with the passengers; the cooks and galleymen do not, and it would be unjust to the latter if I shut my eyes to the fact that the stewards enjoy such additions to their

[12] *Federated Marine Stewards and Pantrymen's Association* v. *The Commonwealth Steamship Owners' Association,* 4 Comm. Arb. Rep. 61.

[13] *Penn.* v. *Spiers and Pond. Ltd.* (1908), 1 K. B. 766.

means of living. It is true that tip money does not come from the employer, but if the price of food suddenly dropped, and rent and the cost of clothes, I should have to reduce the minimum wage in favor of the employers, although the fall in prices is not due to them. . . . How is it possible for me to treat a steward more liberally than a pick and shovel man, if I do not find in the steward a higher degree of skill or some other exceptional circumstances?

The evidence seemed to indicate that tips on the average yielded about £2 ($9.73) a month. This amount, and that allowed for food and lodging, added to existing wages, which were £5 a month, made the average income of stewards £9. 5s. ($45.05) per month. "This," said the president, is "an income fully equal to that which I have laid down as the minimum for unskilled labor."

The president allowed, however, an addition of 10s. ($2.43) to this amount not because of skill, but because of the "exceptional obligations" imposed on stewards:

> They have to keep up a good appearance, wear a uniform, exercise tact with the passengers, and bear responsibility for their employer's property. They bear the expense of their own uniform and laundry; and although this feature of their position has been absurdly magnified, there is no doubt that they do spend more on their washing and their clothes than they would if they had not to don an official jacket and look smart.

To the reader of Mr. Justice Higgins' decisions it is a matter of some surprise that the basic rate, 7s. a day, fixed by the court in 1907 on the basis of the cost of living, has not since been changed, in spite of the noticeable advance since then in the cost of living. It is the more striking when one considers that the judges in other arbitration courts who, as Mr. Justice Higgins has himself observed, had adopted his standard, no longer regard it as sufficient. For some time the New Zealand Arbitration Court considered 8s. ($1.94) per day as the standard rate for unskilled laborers working eight hours per day and recent decisions of that court seem to indicate that 9s. a day is now accepted as the minimum rate. The New South Wales Court a year or two ago advanced its basic rate from 7s. to 7s. 6d. ($1.82) and acting Judge Scoles told the writer in February, 1912, that he was considering the question of a further advance to 8s. No uniformity in this matter could perhaps be discovered in the determinations of wages boards, as these determinations are so largely the outcome of collective bargaining, but it is probable that the chairmen of most boards would now consider 7s. a day as insufficient for an unskilled laborer.

The reason that the Commonwealth Arbitration Court has not seen its way clear to raise the basic rate above 7s. is that the president has felt that no reliable evidence has been furnished as to the extent of the increase in the cost of living. In the Federated Engine Drivers case[14] the employers apparently felt so well satisfied with the 7s. basis that they asked that it be taken as the basic rate for such places as Melbourne. The employees naturally asked for higher rates. The president said:

> I decline to make the basic wage definitely higher in amount on the present loose materials although I cannot help allowing the general tendency to an increase in the cost of living to influence my award in some respects. I have to consider future disputes. A hasty finding on such a subject might do a great deal of harm.

Mr. Justice Higgins has told the writer that he would be very much helped in reaching a decision as to what is a proper basic rate, if the government statistical offices would make a careful investigation into the cost of living in Australia, and that he would accept the conclusions of such an investigation if it were properly conducted. Some data of this sort from the office of the government statistician have been presented to the court but it has not seemed to the president to be sufficient for his purpose. He said of these figures in the Engine Drivers case: "I must have stronger and more precise, cogent, detailed evidence before I give quantitative expression to the increase in the cost of living." It is only fair to Mr. G. H. Knibbs, the government statistician, to say that he recognizes that such information as to the cost of living as his office has been able, so far to present, is by no means conclusive and he desires authority and funds to conduct a more complete inquiry.

In his more recent decisions, especially in the last one which has come to hand, and which was handed down at the close of 1912,[15] Mr. Justice Higgins lays great emphasis on the recent increase in the cost of living. In most of the recent cases, however, he has had to deal almost exclusively with skilled laborers whose wages in any case would be above the living wage rate. It is quite likely that when he comes again to fix the rates of

[14] *Federated Engine Drivers and Firemen's Association of Australia* v. *The Broken Hill Proprietary Company, Ltd. and others,* 5 Comm. Arb. Rep.

[15] *Australian Tramway Employees Association* v. *Prahran and Malvern Tramway Trust and others,* 5 Comm. Arb. Rep.

pay for unskilled labor, he will demand that new evidence be furnished as to the necessary costs of living.

III

So far we have been dealing only with the wages of unskilled laborers, and the doctrine of Mr. Justice Higgins that the minimum wage should be such as will cover "the normal needs of the average employee regarded as a human being living in a civilized community," has been applied by him in fixing the remuneration of unskilled laborers. To this basic rate must be added something in the case of skilled laborers as compensation for their skill and as a reward for having made the sacrifices necessary in order to learn a trade. It is a curious anomaly that strikes every American investigator of industrial conditions who travels in New Zealand and Australia that, while the wages of unskilled laborers are usually higher in Australian cities (especially when allowance is made for the almost universal eight-hour day there) than in cities of the same size in America, the wages paid to most classes of skilled laborers are higher in America. I do not pretend to be able to explain fully this anomalous situation. I suppose it is due, first of all, to the fact that the enormous immigration into this country keeps the supply of unskilled laborers large and their wages low and, in the second place, to the fact that the greater use of labor-saving machinery in American factories, the higher speed at which it is run and the greater use made of the piece-rate system makes the productivity and therefore the earning power of the American skilled laborer higher than that of his Australian contemporary.[16] Something also must be allowed for the fact that unskilled laborers in Australia are much better organized than they are in the United States. Whatever may be the explanation, it is certain that the gap between the wages of the skilled and the unskilled laborers in America is much wider than it is in either New Zealand or Australia. This impression, which I have gained from observation as well as from official reports, was abundantly confirmed by the testimony furnished me by Australian skilled laborers who have also worked at their trade in the United States or Canada.

The ways in which the various arbitration courts fix the mini-

[16] Mr. Justice Higgins has observed this fact and has commented upon it in the Boot Trade case, 4 Comm. Arb. Rep., p. 12.

mum wages for skilled laborers in Australasia show less uniformity than they do in the case of unskilled labor. In New Zealand the practice has become well nigh stereotyped. Wages of unskilled laborers were fixed until recently at 8s. ($1.95) per day, and the minimum for skilled laborers in most trades was then made 10s. ($2.43) per day. If the work required unusual skill or the occupation was a seasonal one, or forty-four instead of forty-eight hours a week were worked, a minimum rate of 11s. ($2.67) was usually set.[17] One wonders at times whether the gap between the wages of skilled and those of unskilled laborers in Australia is sufficient to afford an inducement to parents to have their boys learn a trade; and not only employers, but judges of arbitration courts and chairmen of wages boards have expressed to me their doubts on this subject. The question of apprenticeship and of possible substitutes for it is causing much concern in Australia today, and is receiving the consideration of some of the ablest men in public and private life.

Mr. Justice Higgins has not only expounded with greater fullness and clearness than have other judges the doctrine that a living wage for the lowest grade laborer should form the basis of the minimum wage, but he has, it seems to me, hit upon the correct principle of fixing the minimum wage for skilled laborers. He has done this so often that it is best to allow him to explain it in his own way. This statement of principle, like the doctrine of the living wage, goes back to the Harvester case[18] where the judge said:

> I have generally solid precedents for my standard in the actual practice of experienced employers in great undertakings; and sometimes precedents in awards and wages boards determinations. In cases where I had not the benefit of such guidance, I have freely availed myself of the applicant's own practice, as to the proportion which he maintains between the laborer's wage and that of the several classes of artisans. I make use of his practice as a kind of check or regulator of my conclusions. For instance, the

[17] Mr. Justice Sim, of the New Zealand Arbitration Court, and both of his associates, Messrs. Scott and McCulloch, told me that this was their practice at the time, and it seems to be borne out by an examination of all but the most recent awards. Of course, the court wishes employers to understand that this is merely a minimum rate and is neither a standard nor a maximum rate. Such statistics as have been gathered by the New Zealand Department of Labour, show that average wages in most trades are considerably above the minimum fixed by the court.

[18] *Ex parte H. V. McCay,* 2 Comm. Arb. Rep. 1, p. 16.

applicant's laborer's wage is 6s., and the wage of his sheet-iron workers is 8s. Having fixed the laborer's wage at 7s., I put the wage of the sheet-iron worker at 9s., on the strength of a New Zealand award and such other materials as are before me; and I feel more confidence when I find that I keep nearly the same proportions as the applicant. The ratio of wages paid by an employer is a tolerably safe guide as to the relative merits of the two classes, although the absolute amounts may be too low. There is, therefore, nothing violent or fanciful in my standard. I do not regard it as my duty to fix a high wage, but a fair and reasonable wage; not a wage that is merely enough to keep body and soul together, but something between these two extremes. Having settled the minimum remuneration which I regard as fair and reasonable for the several classes of employees mentioned in the schedule, I may safely leave the men of special skill or special qualifications to obtain such additional remuneration as they can by agreement with the employer. As I am not an expert in the trades, or any of them, I cannot attempt to appreciate the nice points of distinction in the higher ranks of labor. I have dealt only with men of average proficiency.

It is, however, not only a difference in skill which Mr. Justice Higgins has recognized as a reason for a difference in wages. Not being revolutionary in his mental make-up, and considering himself as limited by the purposes and wording of the Conciliation and Arbitration act, he gives full weight to trade practices and social customs so far as they do not tend to lower wages below the living wage limit. In fixing the remuneration of ships' officers in 1910,[19] he said:

I have to keep in mind that I am considering the case of officers—not laborers; and, inasmuch as the ideal of the Court is industrial peace, not any theoretical justice as between classes, I must allow weight to existing conventions and prejudices—to usages which are almost as imperative as natural laws. The masters and officers are required by their employers to keep up a certain appearance. The printed regulations of the companies require them to wear handsome uniforms—with distinctive badges, buttons, gold lace, trappings. . . . The expenditure is admittedly considerable; it is a burden which falls on the officers, and it must be taken into account in fixing the minimum wage necessary for a man in an officer's position.

In fixing piece-work rates, something which the Commonwealth Arbitration Court has seldom been obliged to do, Mr. Justice Higgins has followed the universal Australasian practice of re-

[19] *Merchant Service Guild* v. *The Commonwealth Steamship Owners' Association*, 4. Comm. Arb. Rep. 89.

ducing the piece-work rates to a time basis in order to find out what an average worker would receive in a day. Thus in the Shearers case[20] the president said that the attorneys on both sides agreed with him that "the only way of applying this system to piece work is to reduce the piece-work rates to a time-work basis—to find the piece-work rates which would enable an average shearer to earn such wages per week as may be found to be the just minimum for a shearer to receive if he were paid by time."

It is interesting to note that in this case Mr. Justice Higgins, following his usual custom of first fixing the minimum wages for unskilled laborers—in this instance the "shed hands,"—on the basis of his uniform rate of 7s. per day, then allowing an additional 6s. per week for traveling expenses, and then fixing the wages of shearers 12s. per week higher in order to maintain the existing proportion between the two grades of laborers, reached as his minimum rate of pay for shearers 60s. per week or 24s. per 100 sheep. This was the exact sum that had been fixed in this occupation three years earlier by Mr. Justice O'Conner, who had, however, reached his conclusion by assuming that fair wages had been fixed by the terms of an industrial agreement made in 1891, and that an extra 4s. per 100 should be added because of an increased density of wool, which made shearing more difficult.[21]

One further application and variation of his minimum wage principle has recently been made by Mr. Justice Higgins in fixing the wages of women workers. In the two irrigation settlements of Mildura and Renmark along the Murray River, the first being in Victoria, the latter in South Australia, there have developed within the last decade some important and flourishing fruit-growing industries. During the fruit-picking season when many casual laborers are attracted to these settlements to gather the grapes, apricots, etc., a considerable number of men, women, and children, are employed. Other labor, chiefly that of women and children, is used during other parts of the year in preparing the fruit for market. In a case[22] which came before the Commonwealth Arbitration Court in 1912, the unions representing the workers set up

[20] *The Australian Workers Union* v. *The Pastoralists Federal Council and others,* 5 Comm. Arb. Rep.

[21] 1 Comm. Arb. Rep. 62, pp. 92–93.

[22] *Rural Workers and the South Australian United Laborers Union* v. *The Mildura Branch of the Australian Dried Fruits Association and others,* 5 Comm. Arb. Rep.

the claim that the women should receive the same wages as the men or as they said, "equal pay for equal work." This phrase, the president said implied, "unequal pay for unequal work." He admitted that in occupations where men were chiefly employed and the rate of pay had to be fixed on the basis of the needs of a man with a family, it was proper that women who did the same work should receive the same pay:

> The minimum can not be based on exceptional cases. . . . If blacksmiths are the class of workers, the minimum rate must be such as recognizes that blacksmiths are usually men. If fruit-pickers are the class of workers, the minimum rate must be such as recognizes that up to the present, at least, most of the pickers are men (although women have been usually paid less), and that men and women are fairly in competition with each other. If milliners are the class of workers, the minimum rate, must, I think, be such as recognizes that all or nearly all milliners are women and that men are not usually in competition with them.

He therefore admitted the right of women employed as pickers, to be paid at the same rates as were paid the men, 1s. (24 cents) per hour; "and the employer will then be at liberty freely to select whichever sex and whichever person he prefers for the work."

In the case of the packers, however, the work was found to be essentially women's work and the rate of pay was fixed at 9d. (18 cents) per hour. This wage was fixed on the same principle as the minimum wage was fixed for men, *viz.*, that it was "a fair minimum wage for these women, assuming that they have to find their own food, shelter and clothing," but also assuming that, for the most part, they are not under the same obligations as are most men to provide for the needs of a family.

IV

Such, briefly set forth, are the principles on which the Australasian courts, and more especially the Commonwealth Arbitration Court under the presidency of Mr. Justice Higgins, are attempting to fix wages. Owing to the fact that the president of the Commonwealth Court is selected from among the members of the High Court of Australia, a body corresponding in rank and prestige to the United States Supreme Court, the judgments of such a man exercise a great influence on the judges of the state courts, even though they are not bound to follow these precedents. Both

Mr. Justice Sim of the New Zealand Court of Arbitration and Judge Scoles of the New South Wales Court told me that in reaching their decisions they had been influenced more or less by Mr. Justice Higgins' view as to what should be the basis of the minimum wage, and more than once have I heard in the meetings of wages boards his standard of 7s. per day referred to by employers as a reason why the board should adopt that standard for common labor.

In view of the fact that the needs of the workers have been so often emphasized by the Commonwealth Arbitration Court in fixing the minimum wage, the question may well be asked what consideration, if any, is given to the needs of the employer and the ability of the industry to bear the burden of an advance in wages. It must be admitted that there are statements in the decisions handed down by Mr. Justice Higgins, which if taken from their context and quoted separately, might seem to indicate that the interests of the employers had been overlooked as when in the Harvester case it was said: "If the profits are *nil* the fair and reasonable remuneration must be paid, and if the profits are 100 per cent, it must be paid." But this decision, it must be remembered, was given, not under the Arbitration act, but under the Excise Tariff act. Parliament had by that act merely offered to the manufacturer a *quid pro quo*. It had said: "If you give your employees fair and reasonable remuneration, we will give you the benefits of a high protective duty and we will leave to the Arbitration Court the decision as to whether or not your wages are fair and reasonable."

It cannot, I think, fairly be claimed that Mr. Justice Higgins has failed to consider the employers' point of view. Most people who advance this claim have never read carefully the full decisions, but have reached hasty conclusions from reading extracts from the decisions in the newspapers or from reading editorial comments on the part of a hostile press. While holding rigidly to his point of view that the prime consideration—one to which all other considerations must give way—is a living wage for the average employee, the president has always insisted that the thing next in importance is the ability of the industry to sustain the wage increase. In order to make this possible, he has insisted that the employer must be left perfectly free to select men whose earning power is equal to the wages fixed. "It is," he has said, "one of the recommendations of the minimum wage from the employer's

point of view—he can select the best man available when he has to pay a certain rate."

The Conciliation and Arbitration act (secs. 38s, 84, 85, 86) gives the president of the court authority to examine the books and papers of employers in case he deem it necessary, and this power is exercised whenever employers put forth the claim that their businesses are not capable of paying the wages which the court proposes to award. It has seldom happened, however, that employers have urged this claim; generally they or their counsel have admitted that the industry in question was capable of sustaining the increase. In the Boot Trade case,[23] some of the manufacturers did urge their inability to pay the increase asked for by the men, and after examining the evidence submitted the judge said: "I cannot ignore the facts disclosed privately, by certain manufacturers. . . . There is evidence of close competition, interstate and within the State, and there is evidence that a great increase of wages would probably lead to increased importation in several lines in spite of the protective duties on goods."

To hold that an industry in general, is incapable of an increase of wages is, however, quite a different matter from saying that a particular establishment cannot stand an increase of wages. "There is," says the president, "a clear distinction between the profits of which an industry is capable, and the profits which an individual employer makes. It would be madness to fix a lower wage for a thriftless, shiftless employer than for a rival who uses skill and enterprise and up-to-date appliances."[24]

What, it may be asked, is the attitude of the court towards a claim for a living wage made by men employed in an industry which, through no fault of management, is becoming unprofitable? In the struggle between profits on one side and the standard of living on the other, which side does the court support?

Now this is precisely the question which was raised in what is probably the most famous case which has come before the Commonwealth Arbitration Court.[25] The Proprietary Company, a great mining and smelting company, operating mines and smelters

[23] *Australian Boot Trade Employees Federation* v. *Whybrow and Co. and others,* 4 Comm. Arb. Rep. 1.

[24] 2 Comm. Arb. Rep. 65.

[25] *Barrier Branch of the Amalgamated Miners Association of Broken Hill* v. *The Broken Hill Proprietary Company, Ltd.,* 3 Comm. Arb. Rep. 1.

at Broken Hill and Port Pirie and employing over 4,000 men, had announced a reduction of wages which was resisted by the employees in open court. The company confessed its inability to continue operations on a profitable basis if it were compelled to maintain existing wages. At the existing rate of extraction of the ores, and with the price of metals so low, it would not pay to operate the mine more than two and a half years. It was thought that the company would lose about 8s. per ton of concentrates or 1s. 4d. per ton of crude ore. The company argued that if it were allowed "to reduce the wages bill by some £60,000 to £70,000 per annum—in other words, to reduce the cost by some 10s. 9d. per ton of concentrates—this would turn the loss of 8s. per ton into a profit of 2s. 9d. per ton."

The answer to this plea on the part of the court reflects unmistakably the view as to the proper relations between labor and capital which is today held by the majority of Australians. Having decided, as we have heretofore observed, that the existing rates of pay were not too high to cover the "normal needs of an average employee" living under conditions such as existed at Broken Hill, Mr. Justice Higgins declared:

> If a man cannot maintain his enterprise without cutting down the wages which are proper to be paid to his employees—at all events, the wages which are essential for their living—it would be better that he should abandon the enterprise. This is the view independently adopted by Mr. Justice Gordon in Adelaide, and Mr. Justice Burnside in Western Australia. The former said in the Brushmakers case, "If any particular industry cannot keep going and pay its employees at least 7s. a day of eight hours, it must shut up." In the Collie Miners case, Mr. Justice Burnside refused an application of the employers to lower the minimum, and said, "If the industry cannot pay that price, it had better stop, and let some other industry absorb the workers." Both the other members of the Court concurred in the latter decision. (6 W.A. Arb. Rep. 84.)

The president did not attempt to deny that the Proprietary Company might have to close its mines, but he pointed out that it would be unfair to hold the Arbitration Court responsible for this result. "What stops the mining is the deficiency of paying ore." Nor was he misled by the argument that it was in the interest of the employees that the mine should remain open, even if it had to reduce wages. He agreed with the leaders of the union that a surrender of the living wage was a surrender of the vital point of unionism, and that the Conciliation and Arbitration act

has as one of its "chief objects" (sec. 2) "to facilitate and encourage the organization of representative bodies of employers and of employees." Therefore he said: "I face the possibility of the mine remaining closed with all its grave consequences; but the fate of Australia is not dependent on the fate of any mine, or of any one company, and if it is a calamity that this historic mine should close down, it would be a still greater calamity that men should be underfed or degraded."

Once having established his point that a living wage is to constitute the irreducible minimum—"a thing sacrosanct, beyond the reach of bargaining"—below which wages of average employees may not be allowed to fall, Mr. Justice Higgins is, however, quite willing to allow that the prosperity of an industry will have to be considered in fixing the wages of the higher grade workmen.

In the Boot Trade case, we have seen that interstate and foreign competition entered in to keep the wages for skilled and semi-skilled workers lower than the president would otherwise gladly have allowed, and that the judges of other arbitration courts and the chairmen of wages boards have met the same difficulty in this same industry. Furthermore, Mr. Justice Higgins has said that "when the skilled worker has once been secured a living wage, he has attained nearly to a fair contractual level with the employer, and with caution bargaining may be allowed to operate." In this same Broken Hill case which we have been considering he said that where an industry was just being established, it was possible that workmen of skill might work for a time at less than their proper wages in order to assist in the establishment of an industry which would give more opportunities for employment in the future. For these reasons he thought it was "advisable to make the demarcation as clear and definite as possible between that part of wages which is for mere living and that part of wages which is due to skill or monopoly, or to other considerations."

In other ways than in the arrangement of the wage scale, Mr. Justice Higgins has shown a desire to interfere as little as possible with the employer's right to manage the industry in his own way. He has shown no patience with the demands of the unions that certain regulations be imposed on employers, supposedly in the interest of the employees, but which would hamper the employers in the conduct of business. Although the Com-

monwealth Conciliation and Arbitration act distinctly provides (sec. 40, 1a) that the court may give preference to unionists, and although the New Zealand court and the Australian state courts have repeatedly granted preference, Mr. Justice Higgins has steadily expressed his unwillingness thus to restrict employers in the selection of employees. In only one case—the last one for which the record has come to hand[26]—has the Commonwealth Court allowed the claim of the union for preference of employment to its members. In this case the claim was allowed only because the (American) manager of the Brisbane tramway lines refused to promise to discontinue his practice of discriminating against the members of the claimant union, and the president said: "I am forced to make an order for preference in a form which, I hope, is so guarded as not to curtail the efforts of the manager to get efficiency in his service."

It is true that with most (not all) employers who have appeared before the Commonwealth Arbitration Court as parties to a dispute, the present president of that court is by no means popular, and this same feeling is shared in some degree by the attorneys who have appeared in behalf of the employers. I was at some pains to inquire into the causes of this unpopularity, and while the explanations given were not always the same, I am of the opinion that the unpopularity is due not so much to a feeling that the judgments themselves are unfair, as it is to a certain acerbity of manner shown by the judge in dealing with employers when they have appeared on the witness stand, and to certain infelicitous phrases contained in the decisions themselves, such for example as this:

> The power of the employer to withhold bread is a much more effective weapon than the power of the employee to refuse to labor. . . . The worker is in the same position, in principle, as Esau when he surrendered his birthright for a square meal, or as a traveller is, when he has to give up his money to a highwayman for the privilege of life.

Such expressions are unfortunate when they come from a judge enjoying great prestige and wielding enormous power, for they seem to indicate a bitter feeling towards the employer, a feeling which I am sure Mr. Justice Higgins does not share. The strong expressions of opinion are due rather to the fact that

[26] *Australian Tramway Employees Association* v. *Prahran and Malvern Tramway Trust*, 5 Comm. Arb. Rep. (Dec. 21, 1912).

he sees so clearly the fallacy in the assumption that freedom of contract exists in reality between the individual laborer, without property, and the modern employer with the vast resources at his command.

The position of an arbitration court judge is by no means an enviable one. He is sure to be accused of prejudice either by employers as a class or by the employees. Mr. Justice Sim of the New Zealand court is as unpopular with employees as is Mr. Justice Higgins with employers, and with as little reason, for the minimum wage fixed by the New Zealand court is from 1s. to 2s. per day above that thus far adhered to by Mr. Justice Higgins, and Mr. Justice Sim has pushed the doctrine of preference to unionists farther than has been done by any of his predecessors or in any court that I know of.

Having read carefully all of Mr. Justice Higgins' decisions, and having discussed these matters at great length with him in conversation, I feel warranted in saying that he gives no evidence of bias, and I believe that most economists will agree with me that the principles on which he has based his judgments are fundamentally sound and that he has with relentless logic argued his way to safe and sane conclusions.

He has certainly expressed, at greater length and with greater clearness than has any one else, the ideals which have animated the Australian people and the Australian lawmakers in placing on the statute books the body of social legislation which has drawn the eyes of all the world to Australasia, and which marks the most notable experiment yet made in social democracy. It is only fair to this interpreter of a new spirit that he should have the last word in summing up the philosophy which underlies this new movement:

> I wish it were clearly understood that it is not my function to prescribe to the captains of industry how best to do their business. My function is to secure peace—if possible; and, in order to secure peace, to provide that the employee shall have a reasonable return for his labor—above all, sufficient means to meet the primary wants of human life—including opportunities for rest and recreation. A growing sense of the value of human life seems to be at the back of all these methods of regulating labor; a growing conviction that human life is too valuable to be the shuttlecock in the game of money-making and competition; a growing resolve that the injurious strain of the contest—but only so far as it is injurious—shall, so far as

possible, be shifted from the human instruments. But, in all other respects, employers are to be left free to use their own judgment and discretion, in their efforts to meet the difficult conditions of modern industry.[27]

M. B. Hammond.

Ohio State University.

[27] 4 Comm. Arb. Rep. 101.